IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 2227 of 2007(M)

PETITIONER:

DR. SAJJAD MOHAMMED A.,
S/O. ATHILAPPA RAWTHER, PROPRIETOR,
SCANRON DIAGNOSTICS, PUTHENVEETTIL BUILDING,
OPP. TALUK HOSPITAL, KANJIRAPPALLY.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

3. THE SALES TAX INSPECTOR,
SALES TAX CHECK POST, WALAYAR, PALAKKAD.

GOVT. PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.1.2007 THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) NO. 2227 OF 2007

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DATED THIS, THE 18TH DAY OF JANUARY, 2007

J U D G M E N T

Ext. P2 is a notice issued under Section 47 (2) of the Kerala Value Added Tax Act, pointing out certain defects based on which suspicion is raised that there had been an attempt for evasion of payment of tax. One point raised is that the bill of lading produced along with the goods is a photo copy. According to the petitioner, a photo copy alone was furnished to the driver and so he could only produce the same for verification.

2. However, if the goods are brought to the State, it goes without saying that there is no liability to pay tax and as such the question of evasion of payment of tax does not arise. The Entry Tax having been held to be unconstitutional, the question of collection of tax at the check post does not arise unless this is a case clearly falling under Section 47(2) of the Act. However since notice is issued to the petitioner, he shall submit a detailed reply along with necessary document whereupon final orders will be passed by the authorities. In the meanwhile, goods in question will

be released to the petitioner on his furnishing a bank guarantee.

The writ petition is disposed of as above.

P.R. RAMAN,
JUDGE.

knc/-